IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.8607 OF 2006.

Sadashiv Vishwanath Shete ..Petitioner
(Org. Defendant)

versus

Prakash Baburao Bargo ..Respondent.
(Org. Plaintiff)

Mr.Ajit Kenjale for the Petitioner

Coram : S.R.Sathe, J.
Dated : 30th July, 2007

P.C.

1. Heard learned Advocate for the Petitioner. Perused the papers.

2. This is a suit filed by plaintiff for possession of the suit property i.e. open land from the defendant on various grounds including default.

3. The defendant filed his written statement and contended that the suit property was taken on lease for business as well as residence. He also contended that as per the provisions of Bombay Rent Act, the plaintiff is not entitled to get possession.

4. On the pleadings of the parties, the learned trial judge framed necessary issues. Thereafter the defendant moved an application and prayed that the trial judge should frame issue as to whether the plaintiff is not entitled to get possession of the suit property in view of the provisions of Bombay Rent Act.

5. The Plaintiff filed his say and opposed the application by contending that there is no need to frame issue as suggested and the application is given to delay the proceedings.

6. The trial court observed that plaintiff has not stated in plaint that he is entitled to get possession under the Bombay Rent Act and there is no need to frame additional issues.

7. After perusal of the issues that are framed by the learned trial Judge, it is very clear that the trial Judge has framed specific issue as to whether the plaintiff is entitled for vacant possession of the suit property. Merely because he has not included the words "Bombay Rent Control Act" in the said issue, that would not make any

difference.

8. It is needless to say that ultimately the plaintiff has to prove that he is entitled to get possession of the suit property by virtue of specific legal right. If the defendant wants to say that plaintiff is not entitled to get possession under the Bombay Rent Act, then he can point out the legal provision in that behalf. The issue framed by the learned trial Judge is certainly sufficient to decide the main point as to whether the plaintiff is entitled to recover the possession of the suit property. The object of framing of issues is to direct the attention of the parties to the main question of fact or law to be decided in the suit. The issues are to be framed in respect of only those facts which are alleged by one party and denied by the other. In the instant case, the plaintiff has not specifically averred that he is entitled to get the possession as per the provisions of Bombay Rent Act. So, the issues that are framed by the learned trial Judge are certainly sufficient to decide the real controversy between the parties and they are also sufficient to indicate to the parties as to what case they have to prove. So, it can not be

said that there is necessity to frame the issues as suggested by the defendant.

9. Having regard to the pleadings of the parties and the issues framed by the learned trial judge, it cannot be said that the learned trial Judge has committed any error in rejecting the defendants application for framing of additional issues. Hence, Petition is rejected.

(S.R.Sathe, J.)